

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

OHIO VALLEY ENVIRONMENTAL
COALITION, WEST VIRGINIA
HIGHLANDS CONSERVANCY and
SIERRA CLUB,

Plaintiffs,

v.

CIVIL ACTION NO. 2:13-21588

FOLA COAL COMPANY, LLC,

Defendant.

SCHEDULING ORDER

As requested in the Report of the Parties' Planning Meeting, the Court **ORDERS** this case bifurcated. In Phase I the Court will resolve all jurisdictional and liability issues. The Court will address the schedule as to Phase II at the conclusion of Phase I. As to Phase I, the Court **ORDERS** as follows:

1. Joinder and Amendments: Motions to join other parties or to amend the pleadings shall be filed by **March 7, 2014**.

2. Discovery: The parties shall complete all discovery requests by **November 14, 2014**, and all depositions by **December 30, 2014**. The last date to complete depositions shall be the 'discovery completion date' by which all discovery, including disclosures required by *Fed. R. Civ. P.* 26(a)(1) and (2), but not disclosures required by *Fed. R. Civ. P.* 26(a)(3), should be completed. Pursuant to *L.R.* 26.1(c), the Court adopts and approves agreements of the parties with respect to limitations on discovery (numbers of interrogatories, requests for admissions, and

depositions).

3. Expert Witnesses: The party bearing the burden of proof on an issue shall make the disclosures of information required by *Fed. R. Civ. P.* 26(a)(2)(A) and (B) for that issue to all other parties or their counsel no later than **September 19, 2014**. The party not bearing the burden of proof on an issue shall make the disclosures required by *Fed. R. Civ. P.* 26(a)(2)(A) and (B) for that issue to all other parties or their counsel no later than **November 21, 2014**. All parties shall provide the disclosures required by *Fed. R. Civ. P.* 26(a)(2)(A) and (B) if the evidence is intended solely to contradict or rebut evidence on the same issue identified by another party under *Fed. R. Civ. P.* 26(a)(2)(B), no later than **January 9, 2015**.

4. Dispositive Motions: All dispositive motions, except those filed under *Fed. R. Civ. P.* 12(b), together with depositions, admissions, documents, affidavits or other exhibits, and a memorandum in support of such motions shall be filed by **January 23, 2015**. Any response shall be filed within 14 days of the filing of the motion, with replies due within 7 days of the filing of the response. If not filed electronically, a copy of any motion, supporting memorandum, response and reply, together with documents or materials in support, shall be delivered to the undersigned at the time filing. If filed electronically, a hard copy of any motion, supporting memorandum, response or reply, together with documents or materials in support, exceeding fifty (50) pages in length shall be submitted to the undersigned at the time of filing.

5. Settlement Meeting and *Fed. R. Civ. P.* 26(a)(3) Disclosures: No later than **March 9, 2015**, counsel and any unrepresented parties shall meet to conduct settlement negotiations. Lead trial counsel for the plaintiffs shall take the initiative in scheduling the meeting; all other counsel shall cooperate in the effort to achieve a successful negotiation and settlement. The parties must be prepared at the pretrial conference to certify that they tried to

settle the case. If the case is not settled at the meeting and if there is no order or stipulation to the contrary, counsel and unrepresented parties shall make all *Fed. R. Civ. P.* 26(a)(3) disclosures at the settlement meeting.

6. Proposed Integrated Pretrial Order: Counsel for the plaintiffs shall prepare their portion of the pretrial order and submit it to counsel for the defendant no later than **March 16, 2015**. Counsel for the defendant shall prepare and file a proposed integrated pretrial order no later than **March 23, 2015**. The proposed integrated pretrial order, signed by all counsel and unrepresented parties, shall set forth the matters listed in *L.R.* 26.1(b), including any objections to *Fed. R. Civ. P.* 16.7(b) disclosures.

7. Pretrial Conference: A final pretrial conference shall be held on **March 30, 2015**, at **10:00 a.m.** in **Huntington**. Lead counsel and any unrepresented parties shall appear fully prepared to discuss all aspects of the case. Individuals with full authority to settle the case shall be present in person. Following the pretrial conference, the Court shall enter a final pretrial order, which shall only be modified to prevent manifest injustice.

8. Proposed Findings of Fact/ Conclusions of Law: No later than **March 30, 2015**, counsel and any unrepresented parties shall submit to the presiding judge proposed findings of fact and conclusions of law. The proposed findings and conclusions shall be exchanged among counsel and any unrepresented parties before their submission to the judge. The proposed findings and conclusions shall not be filed with the Clerk and be made part of the record unless ordered by a judicial officer.

9. Final Settlement Conference: A final settlement conference, attended by lead trial counsel and any unrepresented parties, shall be held on **April 13, 2015**, at **9:30 a.m.** in **Huntington**. Individuals with full authority to settle the case shall be present in person.

10. Trial to the Court: Trial of this action shall commence on **April 14, 2015**, at **9:00 a.m.** in **Huntington**.

11. Failure to Appear or Negotiate: At least one attorney for each party and all unrepresented parties participating in any conference before trial shall have authority to make decisions as to settlement, stipulations and admissions on all matters that participants reasonably anticipate may be discussed. Counsel and unrepresented parties are subject to sanctions for failures and lack of preparation.

The Court further **CANCELS** the scheduling conference set for **December 9, 2013**.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: November 26, 2013



ROBERT C. CHAMBERS, CHIEF JUDGE